

**THE SUPREME COURT OF FLORIDA**

CITY OF TALLAHASSEE, FLORIDA

Petitioner,

**CASE NO.: SC21-651**

L.T. Nos.: 1D20-2193

v.

37-2020-CA-001011

FLORIDA POLICE BENEVOLENT  
ASSOCIATION, INC., JOHN DOE 1,  
and JOHN DOE 2,

Respondents.

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**BRIEF OF THE REPORTERS COMMITTEE FOR FREEDOM OF  
THE PRESS, THE RADIO TELEVISION DIGITAL NEWS  
ASSOCIATION, THE POYNTER INSTITUTE, THE SOCIETY OF  
PROFESSIONAL JOURNALISTS FLORIDA CHAPTER, THE  
FLORIDA CENTER FOR GOVERNMENT ACCOUNTABILITY, AND  
THE ASIAN AMERICAN JOURNALISTS ASSOCIATION FLORIDA  
CHAPTER AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER**

Edward L. Birk  
Florida Bar No. 68462  
Marks Gray, P.A.  
1200 Riverplace Blvd. Suite 800  
Jacksonville, FL 32207  
[ebirk@marksgray.com](mailto:ebirk@marksgray.com)  
Telephone: 904.807.2179

*Counsel for Amici Curiae Reporters  
Committee for Freedom of the Press, The  
Radio Television Digital News Assoc., The  
Poynter Institute, The Society of  
Professional Journalists Florida Pro  
Chapter, the Florida Center for Government  
Accountability, and the Asian American  
Journalists Association Florida Chapter*

**TABLE OF CONTENTS**

**Identity and Interests of Amici Curiae** ..... 1

**Summary of Argument** ..... 4

**Argument** ..... 5

I. Respondents’ expansive interpretation of Marsy’s Law exceeds the intended scope of protection for crime victims and conflicts with Florida law .....6

    A. Florida statutory provisions already provide protections for police officer privacy, and explicitly do not provide for redaction of officer names.....6

    B. Other states’ versions of Marsy’s Law have not been given the broad privacy interpretation urged by Respondents.....9

II. Press and public access to law enforcement records is constitutionally mandated and the public has a compelling interest in overseeing the use of police power.....12

    A. Respondents’ expansive interpretation of Marsy’s Law conflicts with the public’s right of access.....12

    B. The public has a compelling interest in monitoring the actions of law enforcement.....15

III. Respondents’ interpretation of Marsy’s Law, if accepted by this Court, would lead to absurd and unintended results...20

    A. Respondents’ position reflects an effort to impermissibly misuse Marsy’s Law to conceal information from the public.....20

    B. The Court should reject Respondents’ misinterpretation of Marsy’s Law to avoid unintended limits on law enforcement accountability.....23

<b>Conclusion</b> .....	25
<b>Certificate of Service</b> .....	26
<b>Certificate of Compliance</b> .....	26

**TABLE OF CITATIONS**

<b>Cases</b>	<b>Page #</b>
<i>Berman v. Parker</i> , 75 S. Ct. 98, 102, 348 U.S. 26, 32 (U.S.,1954)..7	
<i>Christy v. Palm Beach Cnty. Sheriff's Office</i> , 698 So.2d 1365, 1366 (Fla. 4th DCA 1997).....12	
<i>Fla. Police Benevolent Ass’n., Inc. v. City of Tallahassee</i> , 314 So. 3d 796 (Fla. App. 1 Dist., 2021).....4, 22	
<i>City of Centerville v. Knab</i> , 136 N.E.3d 808, 816 (Ohio App. 2019) .....10	
<i>National Collegiate Athletic Ass'n v. The Associated Press</i> , 18 So.3d 1201, 1212 (Fla.App. 1 Dist.,2009) .....13	

<b>Statutory authorities</b>	<b>Page #</b>
AZ ST § 39-127.....11	
Cal. Const. art. I, § 28 (b)(4).....10	
Fla. Const., Art. 1, § 16(b)(5) .....4, 11	
Fla. Const., Art. I, § 16(a)(6).....22	
Fla. Const., Art. I, § 24(a) .....4, 13	
Florida Rule of Appellate Procedure 9.143 (c) (Crime Victims).....21	
Fla. Stat. § 112.532(2).....8	
Fla. Stat. § 112.532(6)... . . . .8	
Fla. Stat. § 112.533.....8	
Fla. Stat. § 119.01.....12	

Fla. Stat. § 119.0719(2)(j)1.....8

Fla. Stat. § 119.0719(4)(d)2.a.....7, 11

**Other authorities** **Page #**

Constitution Revision Commission P.M. Session: March 20, 2018, Volume II, (Pages 191-353).....21

Scottie Andrew, Derek Chauvin: What we know about the former officer charged in George Floyd's death, CNN.....17

Anthony Cormier & Matthew Doig, *Special Report: How Florida’s problem officers remain on the job*, SARASOTA HERALD-TRIBUNE, (Dec. 4, 2011).....15

Christine Mai-Duc, Cleveland officer who killed Tamir Rice had been deemed unfit for duty, L.A. TIMES (Dec. 3, 2014).....17

Sheckler & Armstrong, *A New Study Prompted by Our Reporting Confirms Elkhart, Indiana, Police Department Lacks Accountability*, SOUTH BEND TRIB./PROPUBLICA (Dec. 12, 2019).....19

John Kelly and Mark Nichols, *We found 85,000 cops who’ve been investigated for misconduct. Now you can read their records*, USA TODAY (Jun. 11, 2020).....16

Kenny Jacoby and Ryan Gabrielson, *Marsy’s Law was meant to protect crime victims. It now hides the identities of cops who use force*, USA TODAY (Oct. 29, 2020). .....14, 24

Christian Sheckler, *Two Indiana Police Officers Face Federal Charges in Videotaped Beating of Handcuffed Man*, SOUTH BEND TRIBUNE (Mar. 22, 2019).....18

Devan Patel, *Florida gave thousands of tarnished officers a second chance. Hundreds blew it again*, NAPLES DAILY NEWS (DEC. 29. 2020) .....18

Charles Rabin, *Miami-Dade Police say cop who shot teen is a ‘victim,’ invoke Marsy’s Law and won’t name him*, MIAMI HERALD (Jan. 27, 2022).....22

Jamie Kalven, *Sixteen Shots*, SLATE (Feb. 10, 2015).....19

Frank Cerabino, *Boynton Beach police treat officer as crime victim in dirt-bike death*, PALM BEACH POST (Jan. 4, 2022) .....24

Eliot Kleinberg, *Does Florida’s new crime-victims rights law go too far?*, THE PALM BEACH POST (April 4, 2019).....23

Dan Good, *Chicago police officer Jason Van Dyke emptied his pistol and reloaded as teen Laquan McDonald lay on ground during barrage; cop charged with murder for firing 16 times*, N.Y. DAILY NEWS, (Nov. 24, 2015) .....20

Kenny Jacoby and Ryan Gabrielson, *How Cops Who Use Force and Even Kill Can Hide Their Names From the Public*, PROPUBLICA (Oct. 29, 2020) .....25

Mitch Smith and Julie Bosman, *Jason Van Dyke Sentenced to Nearly 7 Years for Murdering Laquan McDonald*, N.Y. TIMES, (Jan. 18, 2019) .....20

## **IDENTITY AND INTERESTS OF AMICI CURIAE**

This brief is filed on behalf of the Reporters Committee for Freedom of the Press, the Radio Television Digital News Association, the Poynter Institute, the Society of Professional Journalists Florida Chapter, the Florida Center for Government Accountability, and the Asian American Journalists Association Florida Chapter (collectively, “Amici”).

The Reporters Committee for the Freedom of the Press is an unincorporated, nonprofit association founded by leading journalists and media lawyers in 1970 when the nation’s news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.

The Radio Television Digital News Association (formerly Radio and Television News Directors Association) is the world's largest professional organization devoted exclusively to broadcast and digital journalism. Founded as a grassroots organization in 1946, RTDNA’s mission is to promote and protect responsible journalism. RTDNA

defends the First Amendment rights of electronic journalists throughout the country, honors outstanding work in the profession through the Edward R. Murrow Awards and provides members with training to encourage ethical standards, newsroom leadership and industry innovation. RTDNA represents dozens of broadcast and digital journalists in Florida, who serve millions of Floridians by seeking and reporting information of public interest and concern.

The Poynter Institute, a Florida non-profit organization, founded in 1975, is a recognized world leader in journalism and ethics training, newsroom diversity and leadership, and initiatives to foster local news. It has also established itself as a well-regarded fact-checking entity, which includes operations under the brand name PolitiFact. Stated broadly, its mission is to champion freedom of expression, civil dialogue, and compelling journalism that helps people participate in a healthy democracy.

The Society of Professional Journalists Florida Pro Chapter is a statewide branch representing a national organization that is dedicated to perpetuating a free press as the cornerstone of our nation and liberty. At a local level, SPJ Florida acts as a trade and advocacy organization for journalists across the state, while also



operating to teach the general public about journalism and news media literacy.

The Florida Center for Government Accountability is a non-partisan, nonprofit organization that focuses on supporting and assisting citizens and investigative journalists to ensure government accountability and transparency. FLCGA's mission is to ensure civic engagement by securing access to governmental records and facilitating local on-the-ground reporting with the tools, expertise and knowledge required to conduct well-sourced quality reporting.

The Asian American Journalists Association Florida Chapter is a nonprofit organization of Asian American professional and student journalists. It was established in 1996 under the national Asian American Journalists Association. It encourages diversity in newsrooms, as well as fair and accurate coverage of Asian Americans and Pacific Islanders. The association is a means of support among Asian American and Pacific Islander journalists. Many of the Florida Chapter's members interview victims or relatives of victims of crime who want to share their story for various reasons.

As members of the news media and advocates for government transparency, Amici have a direct interest in the outcome of this

matter, which will have broad implications not only for the news media but also for any person seeking access to records held by law enforcement agencies across Florida. The interpretation of Marsy's Law urged by Respondents, if accepted, would hinder the ability of the press and public to monitor crime and the actions of law enforcement—subjects of abiding public interest. Therefore, Amici have a strong interest in the disposition of this case.

### **SUMMARY OF THE ARGUMENT**

Respondents' expansive interpretation of Marsy's Law, adopted by the court below, is inconsistent with Florida's Public Records Act and exceeds the intended scope of protections for crime victims under Art. 1, § 16(b)(5). Florida's Constitution ensures government transparency and accountability by guaranteeing the public's right to inspect government records and scrutinize the inner workings of the government. Fla. Const., Art. I, § 24(a). To allow law enforcement officers to shield information from the public through Marsy's Law would be inconsistent with Florida's constitutional right of access to government records (as the trial court correctly found). *See Fla. Police Benevolent Association, Inc. v. City of Tallahassee*, 314 So. 3d 796, 799 (Fla. 1st DCA. 2021). Law enforcement officers should not be

permitted to evade the transparency required of them as public officials by claiming “crime victim” status.

Marsy’s Law was conceived to codify the rights of crime victims navigating the law enforcement and judicial systems. It was not intended to be invoked by law enforcement officers to shield their official conduct from public scrutiny. Indeed, unlike your average public citizen, law enforcement officers are in a unique position of power and responsibility—they have access to a wealth of information and government resources, and can utilize numerous platforms to amplify their voice and exert power in the criminal justice system. The misuse of Marsy’s Law prevents the public from effectively reviewing police actions, and thwarts efforts to hold officers accountable for misconduct. Respondents’ proposed application would not only undermine public transparency but would also lead to unintended and absurd results. For the reasons herein, Amici respectfully urge the Court to reverse.

## ARGUMENT

**I. Respondents’ expansive interpretation of Marsy’s Law exceeds the intended scope of protection for crime victims and conflicts with Florida law.**

**A. Florida statutory provisions already provide protections for police officer privacy, and explicitly do not provide for redaction of officer names.**

Respondents seek to prevent the City of Tallahassee, a public entity subject to Article I, Section 24 of the Florida Constitution and the Florida Public Records Act, Chapter 119, Florida Statutes, from responding to public records requests that would disclose the names of two police officers who fatally shot people while on duty. Though the names of law enforcement officers involved in fatal shootings would normally be required to be disclosed under Florida law, Respondents argue that both officers here qualify as “crime victims” under Article 1, Section 16 of the Florida Constitution, commonly known as “Marsy’s Law,” because they were allegedly threatened with weapons at the time they shot and killed individuals.

Law enforcement officers, who are highly visible representatives of government authority, were not intended to qualify as “crime victims” under Marsy’s Law because they have special powers and protections in the criminal justice system that ordinary citizens do

not possess. Indeed, while “[p]ublic safety, public health, morality, peace and quiet, law and order. . . are some of the more conspicuous examples of the traditional application of the police power,” “[a]n attempt to define [police power’s] reach or trace its outer limits is fruitless, . . .” *Berman v. Parker*, 348 U.S. 26, 32 (1954). As such, police officers and their agencies have broad discretion to control the flow of information in the criminal justice system, access investigative records, and collaborate with the judicial system—all areas of influence lacking for crime victims that the creators of Marsy’s Law sought to address.

Moreover, other provisions of Florida law provide law enforcement officers with substantial privacy protections—though, notably, none preclude releasing officer names. For example, Florida law protects the private and personal information of police officers through a special carve-out provision in the Florida Records Act. Section 119.0719(4)(d)2.a denies the public access to otherwise-available records containing the home address, telephone number, date of birth, or photograph of an active or retired law enforcement officer, as well as their spouses, their children, and their children’s educational institutions. Fla. Stat. § 119.0719(4)(d)2.a. Officer

names are absent from the list of information that may be redacted under this provision. And, notably, unlike “Marsy’s Law,” which restricts access to the “identity” of a crime victim, *see* Fla. Stat. § 119.0719(2)(j)1, the law enforcement exemption to the Public Records Act does not. Plainly, the Legislature recognized that the public has a heightened interest in access to law enforcements officers’ names, and did not intend to permit those names to be withheld from the public.

Additionally, law enforcement officers enjoy other special privacy privileges under Florida’s Public Records Act, which allows police officers and their agencies to control the flow of information about police misconduct. Section 112.533, Florida Statutes, requires law enforcement agencies to establish a system for processing complaints. Such investigations are confidential and any attempt to disclose information relating to any investigation results in a first-degree misdemeanor charge. All information corresponding to the investigation remains privileged until the investigation ends, up until 180 days in duration. Fla. Stat. § 112.532(6). Further, Florida law offers another layer of protection by directing agencies to establish complaint review boards for their officers. Fla. Stat. § 112.532(2).

The public is prevented from knowing the nature of a complaint, the target of a complaint, or the findings of a subsequent investigation until the investigation is completed.

In short, law enforcement already enjoys specific, heightened privacy protections under Florida's public records law, and are already in a unique position to blunt public scrutiny of their official conduct. Application of Marsy's Law to on-duty police officers would run counter to the Legislature's clear intent to make the names of police officers public.

**B. Other states' versions of Marsy's Law have not been given the broad privacy interpretation urged by Respondents.**

Other states' versions of Marsy's Law have not been interpreted with the breadth urged here. Indeed, several other states have passed versions of Marsy's Law that provide specific rights to victims but make no reference to disclosure of information or records at all. *See* ILL. CONST. art. I, § 8.1; OHIO CONST. art. I, § 10a; OKLA. CONST. art. II, § 34. These states rely on other laws to protect sensitive information relating to especially vulnerable victims of crime. *See* 750 Ill. Comp. Stat. Ann. 61/15 (providing address confidentiality to victims of domestic violence); Okla. Stat. Ann. tit.

22, § 60.14 (West) (preventing disclosure of the addresses of victims of domestic abuse, sexual assault, or stalking). In other words, Marsy’s Law is not generally understood to be an all-encompassing secrecy provision.

Moreover, a review of other states’ Marsy’s Laws underscores that the protections they afford are intended for crime victims—not on-duty law enforcement officers. In one of the few judicial tests of Marsy’s Law, an Ohio appellate court ruled that the statute’s understanding of “victimhood” could not be read broadly to encompass a police department as a “crime victim” entitled to receive restitution payments from the offender. *City of Centerville v. Knab*, 136 N.E.3d 808, 816 (Ohio App. 2019). Other states’ versions of Marsy’s Law and similar state crime victims’ laws make clear that their intended purpose is to provide victims of crime and their families with enhanced protections from harassment and effective access to the judicial system—goals that are unnecessary for law enforcement officers. *See, e.g.*, Cal. Const. art. I, § 28 (b)(4) (“To prevent the disclosure of confidential information or records to the defendant, the defendant’s attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the



victim or the victim's family or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law.”); AZ ST § 39-127 (a victim's attorney or immediate family member, if victim is deceased, has the right to receive one copy of the police report from investigating law enforcement).

Florida's version of Marsy's Law prevents disclosure of records that could be used to locate or harass the victim or the victim's family. Art. I, § 16(b)(5), Fla. Const. Reading this provision expansively to prevent disclosure of the name of a law enforcement officer would place Florida significantly out of step with other states that have adopted versions of Marsy's Law. It would also upend the balance struck by the Legislature in Section 119.0719(4)(d)2.a., Florida Statutes, which identifies certain sensitive information about law enforcement officers (such as home addresses) that can legitimately be withheld to address valid privacy concerns, but conspicuously does not include the officers' names among the categories of exempt information.

The highly expansive interpretation of Florida's provision urged by Respondents runs counter to the right of access enshrined in

Florida's Constitution. Art. I, § 24, Fla. Const. Where possible, the Court should avoid creating an irreconcilable conflict between two constitutional rights. A commonsense interpretation of Marsy's Law that would exclude on-duty law enforcement officers from the definition of "crime victim" would achieve that objective.

**II. Press and public access to law enforcement records is constitutionally mandated and the public has a compelling interest in overseeing the use of police power.**

**A. Respondents' expansive interpretation of Marsy's Law conflicts with the public's rights of access.**

The First District Court of Appeal erred when it accepted Respondents' broad interpretation of Marsy's Law's privacy provision. Respondents' interpretation, if accepted by this Court, would allow law enforcement officers to shield their identities from the public notwithstanding that the public's right of access to such information is enshrined in Florida's Constitution and in Florida's Sunshine Laws. Art. I, § 24, Fla. Const. Fla. Stat. § 119.01 *et seq.* In 1999, Florida voters passed the Sunshine Law as a constitutional amendment, granting the public access to government meetings and records. *See Christy v. Palm Beach Cty. Sheriff's Office*, 698 So.2d 1365, 1366 (Fla. 4th DCA 1997) (noting that Florida's Public Records

act favors open government, permitting Florida citizens to discover the action of their government). Such access facilitates public confidence in government by assuring that Floridians can request and obtain public records that will inform them of whether government actors are operating in the public interest.

Allowing officers to claim crime victim status not only chips away at the public's right of access guaranteed in the Constitution, but it also creates an irreconcilable conflict between two constitutional rights. The public's right of access is guaranteed by the Florida Constitution and should be read alongside Marsy's Law to effectuate its clear purpose to provide transparency in law enforcement operations. *See National Collegiate Athletic Ass'n v. Associated Press*, 18 So. 3d 1201, 1212 (Fla. 1st DCA 2009) (finding the commerce clause did not outweigh the public's right to access because the Florida's Public Record Law promotes a state interest of the highest order). The appellate court below thus erred in holding that Article I, Section 24 can be read in harmony with Respondents' proffered expansive application of Article I, Section 16, as doing so would unconstitutionally restrict the public's access to the names of

law enforcement officers involved in use-of-force incidents, including fatal ones.

Indeed, the court below failed to consider the latter half of Article I, Section 24(a) in its analysis, which sets forth the public's broad right to inspect, copy or receive a public record from "legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution." Florida law enforcement agencies are required to enforce the laws of the state and are part of the executive branch, making police officer records subject to public oversight.

Moreover, names of criminal defendants, witnesses, and victims inevitably become public during the course of any subsequent criminal proceedings, including when defendants assert their Sixth Amendment confrontation rights and victims testify at public trials.<sup>1</sup>

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<sup>1</sup> Kenny Jacoby and Ryan Gabrielson, *Marsy's Law was meant to protect crime victims. It now hides the identities of cops who use force*, USA TODAY (Oct. 29, 2020) available at <https://www.usatoday.com/in-depth/news/investigations/2020/10/29/police-hide-their-identities-using-victims-rights-bill-marsys-law/3734042001/>

Court records typically provide police officers' names as well.<sup>2</sup> Respondents' expansive interpretation of Marsy's Law is thus inconsistent with broad public records access rights to government and judicial records.

**B. The public has a compelling interest in monitoring the actions of law enforcement.**

The public has the right to scrutinize the actions of law enforcement officers and agencies. Complete and timely disclosure of information about police use-of-force incidents, in particular, enables the public to identify patterns of police misconduct. For example, using police personnel files, the Sarasota Herald-Tribune built a comprehensive database of verified internal affairs complaints against every certified officer in Florida, exposing flaws in the oversight of officers that enabled them to keep their badges even after committing serious crimes, including spousal abuse and sexual battery.<sup>3</sup> Similarly, the nonprofit Invisible Institute and its affiliated

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<sup>2</sup> *Id*

<sup>3</sup> Anthony Cormier & Matthew Doig, *Special Report: How Florida's problem officers remain on the job*, SARASOTA HERALD-TRIBUNE, Dec. 4, 2011, cited in *Behind the Story: Tracking problem police officers in Florida*, INVESTIGATIVE REPORTERS & EDITORS,

newsroom created a significant collection of police misconduct records from thousands of state agencies, prosecutors, and police departments that disclosed at least 200,000 incidents of alleged misconduct by police officers with much of the cases being previously unreported.<sup>4</sup> Tens of thousands of those records contained serious misconduct and abuse such as excessive force, rape, child molestation and domestic violence by officers.<sup>5</sup> Respondents' proposed application of Marsy's Law would stymie such important newsgathering.

Following the May 2020 murder of George Floyd by police in Minneapolis, Minnesota, access to the name of now-convicted police officer Derek Chauvin enabled journalists to research his complaint

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and available at <https://www.ire.org/behind-the-story-tracking-problem-police-officers-in-florida/>

<sup>4</sup> John Kelly and Mark Nichols, *We found 85,000 cops who've been investigated for misconduct. Now you can read their records*, USA TODAY (Jun. 11, 2020) available at <https://www.usatoday.com/in-depth/news/investigations/2019/04/24/usa-today-revealing-misconduct-records-police-cops/3223984002/>

<sup>5</sup> *Id.* Records also include over 110,000 internal affairs investigations revealing more than 30,000 officers who were decertified by 44 state oversight agencies.

history. Journalists reported at least 18 prior misconduct complaints against Chauvin, only two of which resulted in any documented disciplinary action—raising questions about the effectiveness of internal police oversight that might have otherwise gone unasked.<sup>6</sup> Similarly, access to the identity of the police officer who shot and killed 12-year-old Tamir Rice in Cleveland, Ohio enabled the press and public to learn that the officer had been forced to resign from his prior police job on the grounds of immaturity and lack of judgment, raising significant questions about how thoroughly Cleveland police background-checks its recruits.<sup>7</sup>

Press and public access to law enforcement records also allows the public to hold officers accountable for wrongdoing, and enables law enforcement to take corrective action as well. In 2011, Florida Atlanta University fired Officer Jimmy Dac Ho for shooting and killing

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<sup>6</sup> Scottie Andrew, *Derek Chauvin: What we know about the former officer charged in George Floyd's death*, CNN.COM (Jun. 1, 2020), available at <https://www.cnn.com/2020/06/01/us/derek-chauvin-what-we-know-trnd/index.html>.

<sup>7</sup> Christine Mai-Duc, *Cleveland officer who killed Tamir Rice had been deemed unfit for duty*, L.A. TIMES (Dec. 3, 2014), available at <https://www.latimes.com/nation/nationnow/la-na-nn-cleveland-tamir-rice-timothy-loehmann-20141203-story.html>

29-year-old Sheri Carter.<sup>8</sup> Access to his name not only revealed Ho's prior misconduct—he was fired from Broward County's Sheriff's Office after he was accused of domestic violence and excessive force—but it also uncovered extensive misconduct by officers around him. One of those colleagues, former Biscayne Park Police Chief Raimundo Atesiano, pled guilty in 2018 to directing officers to frame people through false arrests and false confessions to clear unsolved burglaries.<sup>9</sup>

In Elkhart, Indiana, the nonprofit investigative news organization ProPublica and a local newspaper unearthed body camera video of an unprovoked beating of a handcuffed man by two police officers, which had gone unaddressed for 11 months; after the news report, the officers were indicted on federal civil rights charges.<sup>10</sup> Reporters went on to find that the Elkhart Police

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<sup>8</sup> Devan Patel, *Florida gave thousands of tarnished officers a second chance. Hundreds blew it again*, NAPLES DAILY NEWS (DEC. 29, 2020), available at <https://www.naplesnews.com/in-depth/news/crime/2020/12/29/hundreds-florida-officers-given-second-chance-blew-again/3764571001/>

<sup>9</sup> *Id.*

<sup>10</sup> Christian Sheckler, *Two Indiana Police Officers Face Federal Charges in Videotaped Beating of Handcuffed Man*, SOUTH BEND



Department was riddled with cases of excessive force and other serious wrongdoing, including three supervising officers who had been convicted of crimes during their time in office but continued to serve.<sup>11</sup> None of that investigative reporting would have been possible if officers could readily have their identities erased from the public record.

Finally, perhaps no better example exists of the importance of public access to law enforcement records than the 2014 police killing of a Chicago teenager, Laquan McDonald, who (in the official police account) was purported to have threatened officers with a knife, necessitating a self-defense shooting.<sup>12</sup> In reality, once journalists

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TRIBUNE (Mar. 22, 2019), available at <https://www.propublica.org/article/two-elkhart-indiana-police-officers-face-federal-charges-in-video-beating>

<sup>11</sup> Christian Sheckler & Ken Armstrong, *A New Study Prompted by Our Reporting Confirms Elkhart, Indiana, Police Department Lacks Accountability*, SOUTH BEND TRIBUNE/PROPUBLICA (Dec. 12, 2019), available at <https://www.propublica.org/article/a-new-study-prompted-by-our-reporting-confirms-elkhart-indiana-police-department-lacks-accountability>

<sup>12</sup> See Jamie Kalven, *Sixteen Shots*, SLATE (Feb. 10, 2015), available at <https://slate.com/news-and-politics/2015/02/laquan-mcdonald-shooting-a-recently-obtained-autopsy-report-on-the-dead-teen-complicates-the-chicago-police-departments-story.html>

sued the City of Chicago and forced access to withheld dashboard camera video of the incident, the truth emerged: McDonald was murdered by an officer who shot the teenager while he was walking away. The officer, who was later convicted for the killing shot McDonald at least 16 times, including while he was lying on the ground.<sup>13</sup> Had the police department's position prevailed in that case, the video would have remained concealed.

**III. Respondents' interpretation of Marsy's Law, if accepted by this Court, would lead to absurd and unintended results.**

**A. Respondents' position reflects an effort to impermissibly misuse Marsy's Law to conceal information from the public.**

Adoption of Respondents' construction of Marsy's Law would lead to absurd results and reduce transparency in government and policing. Just as Respondents argue that Marsy's Law permits the

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<sup>13</sup> See D. Good, *Chicago police officer Jason Van Dyke emptied his pistol and reloaded as teen Laquan McDonald lay on ground during barrage; cop charged with murder for firing 16 times*, N.Y. DAILY NEWS, Nov. 24, 2015 available at <https://www.nydailynews.com/news/national/shot-laquan-mcdonald-emotionless-court-arrival-article-1.2445077> ; Smith and Bosman, *Jason Van Dyke Sentenced to Nearly 7 Years for Murdering Laquan McDonald*, N.Y. TIMES, Jan. 18, 2019 available at <https://www.nytimes.com/2019/01/18/us/jason-van-dyke-sentencing.html>

withholding of the names of officers involved in police use-of-force incidents from the public, law enforcement elsewhere in the state has also impermissibly invoked Marsy's Law in an incorrect "opt out" fashion to evade their obligations under Florida's Public Records Act.

Article 1, Section 16(a)(6) declares, "A victim shall have the following specific rights ***upon request.***" (Emphasis added). And Florida Rule of Appellate Procedure 9.143(c) (Crime Victims), acknowledges that this opt-in feature of Marsy's Law as a matter of procedure, providing that "[a] victim seeking to invoke a right under article I, section 16, of the Florida Constitution may file a motion in the court in which the matter is pending." In fact, the legislators in the Constitution Revision Commission for Marsy's Law could not have been clearer about the matter: "[Crime victims] are entitled to certain things that is *upon request*. That is *upon a request to opt in*, the notification of participation, the opportunity to be heard, yes, *that is an opt in.*"<sup>14</sup> The appellate court below thus erred in concluding

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<sup>14</sup> See Constitution Revision Comm'n P.M. Session: Mar. 20, 2018, Volume II, P. 248), (Statement of Comm'r T. Cerio) available at <http://library.law.fsu.edu/Digital-Collections/CRC/CRC-2018/PublishedContent/ADMINISTRATIVEPUBLICATIONS/MEETINGS/TRANSCRIPTS/Transcript03-20-2018Vol2.pdf> (emphasis added).

that Marsy's Law protections are afforded to crime victims at the time of victimization. *Fla. Police Benevolent Association, Inc. v. City of Tallahassee*, 314 So.3d 796, 803–04 (Fla. 1st DCA 2021) (opining that a criminal prosecution need not begin before a victim may assert his rights but rather, the protections afforded to crime victims in Marsy's Law begins at the time of victimization).

Respondents' view of Marsy's Law as an "opt-out" provision is thus incorrect and leads to absurd results that erode transparency. For example, in 2019, Tampa police invoked Marsy's Law to shield the names of two people who were found dead in a car near Busch Gardens, notwithstanding that the deceased "crime victims" could not opt-in to the privacy protections, nor had their families.<sup>15</sup> Similarly, in June 2021, Miami-Dade police refused to release the name of 58-year-old man who was struck by a car and killed while on his motorcycle at an intersection.<sup>16</sup> Police agencies in Martin

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<sup>15</sup> C. Rabin, *Miami-Dade Police say cop who shot teen is a 'victim,' invoke Marsy's Law and won't name him*, MIAMI HERALD (Jan. 27, 2022) available at <https://www.miamiherald.com/news/local/crime/article257736323.html>

<sup>16</sup> *Id.*

County redact crime victim's names from all reports along with any information that they think is identifiable.<sup>17</sup> Regardless of the type of crime committed, or whether Marsy's Law has been invoked by a crime victim or their family, the Hillsborough County Sheriff's Office and Tampa police refuse to provide any victim's name, address, or birthdate.<sup>18</sup> Law enforcement agencies applying Respondents' mistaken opt-out interpretation of Marsy's Law are thus misusing the law to stymie public access to basic information about crime in their communities. Such information is outside the scope of Marsy's Law and is inconsistent with Florida's public records law.

**B. The Court should reject Respondents' misinterpretation of Marsy's Law to avoid unintended limits on law enforcement accountability**

Respondents are not alone in seeking to misuse Marsy's Law to restrict public access to information about law enforcement encounters with the public. Indeed, police departments throughout

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<sup>17</sup> E. Kleinberg, *Does Florida's new crime-victims rights law go too far?*, THE PALM BEACH POST (April 4, 2019) available at <https://www.palmbeachpost.com/story/news/crime/2019/04/04/does-floridas-new-crime-victims-rights-law-go-too-far/5529517007/>

<sup>18</sup> *Id.*

the state have inconsistently interpreted and applied the law. On the one hand, in early 2019, the Jacksonville Sheriff's Office presented a training on Marsy's Law advising that "Police Officers cannot invoke Marsy's Law in the course of their official duty."<sup>19</sup> On the other hand, Boynton Beach Police refused to release the name of an officer who chased a 13-year-old who crashed and died riding his dirt bike, a gift he received for Christmas.<sup>20</sup> In Collier and Charlotte Counties, police have utilized Marsy's Law to withhold the names of deputies in roughly 1 in 6 incidents when officers have used force that resulted in an injury to the civilian.<sup>21</sup> This is particularly troubling in light of a recent in-depth investigation that revealed that police nationwide

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<sup>19</sup> Kenny Jacoby and Ryan Gabrielson, *Marsy's Law was meant to protect crime victims. It now hides the identities of cops who use force*, USA TODAY (Oct. 29, 2020), available at <https://www.usatoday.com/in-depth/news/investigations/2020/10/29/police-hide-their-identities-using-victims-rights-bill-marsys-law/3734042001/>

<sup>20</sup> F. Cerabino, *Boynton Beach police treat officer as crime victim in dirt-bike death*, PALM BEACH POST (Jan. 4, 2022) available at <https://www.palmbeachpost.com/story/news/columns/2022/01/04/boynton-beach-police-cite-marsys-law-shielding-officer-id-death-stanley-davis-jr/9077176002/>

<sup>21</sup> *Id.*

claim crime victim status in half of all incidents where they sustained no injuries.<sup>22</sup>

As this lack of uniformity shows, law enforcement officers and agencies across Florida lack clarity about how Marsy's Law should be applied. Marsy's Law should not erode the public's access to vital public information about crime in their neighborhoods, nor hinder public oversight of law enforcement agencies. Floridians have the right to know about the actions of the officers sworn to serve and protect them, especially in cases of alleged misconduct and where officers have used deadly force.

### **CONCLUSION**

Respondents' overbroad interpretation of Marsy's Law to shield the names of on-duty officers will reduce transparency by obstructing the public's right to observe and scrutinize the conduct of government officials. Amici respectfully urge this Court to reverse the decision of the appellate court below.

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<sup>22</sup> K. Jacoby and R. Gabrielson, *How Cops Who Use Force and Even Kill Can Hide Their Names From the Public*, PROPUBLICA (Oct. 29, 2020) available at <https://www.propublica.org/article/how-cops-who-use-force-and-even-kill-can-hide-their-names-from-the-public>

/s Edward L. Birk  
Edward L. Birk  
Florida Bar No. 68462  
Marks Gray, P.A.  
1200 Riverplace Blvd. Suite 800  
Jacksonville, FL 32207  
[ebirk@marksgray.com](mailto:ebirk@marksgray.com)  
Telephone: 904.807.2179

*Counsel for Amici Curiae Reporters  
Committee for Freedom of the Press,  
The Radio Television Digital News  
Association, The Poynter Institute,  
The Society of Professional  
Journalists Florida Pro Chapter, the  
Florida Center for Government  
Accountability, and the Asian  
American Journalists Association  
Florida Chapter*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all parties and amici by filing through the Florida E-Filing Portal, this **20th day of March 2022**:

**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that this brief complies with the font and word-count requirements of Fla. R. Ap4\p. P. 9.045, 9.210, and 9.370 and Fla. R. Gen. Prac. & Jud. Admin. 2.520.

/s Edward L. Birk  
Attorney